

outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

*Make item* means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

*Make-or-buy plan* means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

(b) *Make-or-buy plan.* The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

(1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.

(2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.

(c) *Submission and approval.* For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:

(1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;

(2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:

(i) The contractor is not the least-cost performer, and

(ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;

(3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";

(4) Identification of potential suppliers and subcontractors, if known, and their location and size status;

(5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

(6) A description of the impact of a change in current practice of making or buying on the existing work force; and

(7) Any additional information appropriate to support and explain the plan.

(d) *Conduct of operations.* Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.

(e) *Changes to the make-or-buy plan.* The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:

(1) A lesser period is provided either for the total plan or for individual items or work effort;

(2) The circumstances supporting the make-or-buy decisions change, or

(3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

(End of clause)

#### 970.5215-3 Conditional payment of fee, profit, or incentives.

As prescribed in 48 CFR 970.1504-5(c), insert the following clause:

##### CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES (DEC 2000)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause, and if Alternate I is applicable, (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make

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a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) *Minimum requirements for Environment, Safety & Health (ES&H) Program.* The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the contracting officer. The minimum performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) *Minimum requirements for catastrophic event.* If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

(End of clause)

*Alternate I (DEC 2000).* As prescribed in 48 CFR 970.1504-5(c), for contracts awarded on a cost-plus-award-fee, incentive fee or multiple fee basis, add the following paragraphs (c) and (d):

(c) *Minimum requirements for specified level of performance.* (1) At a minimum the Contractor must perform the following:

(i) the requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;

(ii) all of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) all other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the contracting officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(d) *Minimum requirements for cost performance.* (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the contracting officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

### 970.5215-4 Cost reduction.

As prescribed in 48 CFR 970.1504-5(d), insert the following clause:

#### COST REDUCTION (DEC 2000)

(a) *General.* It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas